

1 BENJAMIN K. RILEY (SBN 112007)  
*briley@bzbm.com*  
2 KERRY L. DUFFY (SBN 233160)  
*kduffy@bzbm.com*  
3 BARTKO ZANKEL BUNZEL & MILLER  
A Professional Law Corporation  
4 One Embarcadero Center, Suite 800  
San Francisco, California 94111  
5 Telephone: (415) 956-1900  
Facsimile: (415) 956-1152

6 Attorneys for Plaintiff  
7 RICCARDO SILVA

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9  
10 UNITED STATES DISTRICT COURT  
11  
12 NORTHERN DISTRICT OF CALIFORNIA

13  
14 *IN RE: SUBPOENA REDDIT, INC.*

15 Case No. 3:23-mc-80119

16 (Originating Case: Silva v. Doe 1, et al., S.D.  
17 Fla. 1:22-cv-24262-RKA)

18  
19 **PLAINTIFF RICCARDO SILVA'S  
NOTICE OF MOTION AND MOTION TO  
COMPEL THIRD-PARTY REDDIT, INC.  
TO RESPOND TO SUBPOENA;  
MEMORANDUM IN SUPPORT**

20  
21 Date: TBD  
22 Time: TBD  
23 Ctrm.: TBD  
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3036.000/1840442.1

1 **TO ALL PARTIES, THIRD-PARTY REDDIT, INC., AND COUNSEL OF RECORD:**

2 **PLEASE TAKE NOTICE** that on \_\_\_\_\_, at \_\_\_\_:\_\_\_\_, or as soon  
3 thereafter as this matter may be heard in the courtroom of \_\_\_\_\_, located at  
4 \_\_\_\_\_, California \_\_\_\_, Plaintiff Riccardo Silva (“Plaintiff” or “Mr. Silva”),  
5 will and hereby does move this Court for an Order compelling Third-Party Reddit, Inc. (“Reddit”)  
6 to comply with Plaintiff’s subpoena served on Reddit on March 31, 2023 (the “Subpoena”).

7 This Motion to Compel is brought pursuant to Rules 26, 37 and 45 of the Federal Rules of  
8 Civil Procedure, and the applicable Local Rules of this Court, on the grounds that counsel for  
9 Plaintiff and Reddit met and conferred in good faith pursuant to Civil Local Rule 37, but were  
10 unable to resolve Reddit’s First Amendment objection. Specifically, Reddit maintains that it  
11 cannot comply with the Subpoena absent a Court Order directing compliance, asserting that a  
12 Court must first conduct a First Amendment analysis of the requested discovery, including  
13 whether Mr. Silva has satisfied the applicable standard regarding the qualified right to anonymous  
14 speech under the First Amendment to the United States Constitution.

15 This Motion to Compel is based on this Notice of Motion and Motion, as well as the  
16 following Memorandum in Support, the accompanying Declaration of Kerry L. Duffy, the  
17 accompanying Declaration of Adam Stoltz and all exhibits thereto, all cited authorities, all files and  
18 records in the underlying litigation currently pending in the U.S. District Court for the Southern  
19 District of Florida, *Silva v. John Doe 1, et al.*, Case No. 1:22-cv-24262-RKA, any additional  
20 matters as may be judicially noticed by the Court, and on the oral argument and any other  
21 evidence that may come before the Court prior to or during the hearing on this Motion to Compel.

22 DATED: April 19, 2023

BARTKO ZANKEL BUNZEL & MILLER  
A Professional Law Corporation

25 By: \_\_\_\_\_ /s/ *Kerry L. Duffy*

26 Kerry L. Duffy

27 Attorneys for Plaintiff RICCARDO SILVA

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## **MEMORANDUM IN SUPPORT**

## I. INTRODUCTION

3 Strong grounds and the equities exist for the Court to issue an order compelling Reddit to  
4 comply with the Subpoena and promptly produce the requested documents and information. This  
5 action arises out of a pending lawsuit in the Southern District of Florida proceeding under Case  
6 No. 1:22-cv-24262-RKA (the “Florida Lawsuit”). *See* Stolz Decl. iso Motion to Compel (“Stolz  
7 Decl.”) filed herewith at ¶ 1, Ex. 1 [Complaint]. The underlying Florida Lawsuit involves various  
8 claims regarding a carefully-crafted defamation campaign waged against Mr. Silva by one or more  
9 anonymous individuals (with the assistance of a mobile billboard company), who are currently  
10 identified in the Florida Lawsuit as Defendants John Doe 1, John Doe 2, John Doe 3, and John  
11 Doe 4 (the “Defendants”).<sup>1</sup> Mr. Silva is a successful businessman, philanthropist, and devoted  
12 husband and father.

13        While the identities of the Defendants are unknown to Mr. Silva at this moment, it is clear  
14 that these individuals carefully planned and coordinated their defamation campaign to deliberately  
15 target and harm Mr. Silva. They have gone to great lengths to conceal their identities and evade  
16 the consequences of their flagrantly unlawful actions. Specifically, the false and defamatory  
17 statements entail express and implied accusations of criminality—such as sexual misconduct and  
18 bribery. *See* Stoltz Decl. ¶ 1, Ex. 1 ¶¶ 17, 21, 24, 26, 28-29, 33, 45.

19 As further explained herein, the Subpoena requests documents and information from  
20 Reddit regarding the identity of the user(s) or subscriber(s) who own(s) and operate(s) the Reddit  
21 Handle, u/SOSilva7.<sup>2</sup> See Stolz Decl. ¶ 3, Ex. 2 [Subpoena]. Over the past several months,  
22 Mr. Silva has undertaken *substantial* measures and expense in an attempt to identify the  
23 Defendants—to no avail. *Id.* ¶¶ 9, 12. The information sought in the Subpoena to Reddit is critical  
24 to the interests of justice because it seeks necessary information that could potentially identify one

26 |<sup>1</sup> Since it is unknown and unknowable at this time whether the anonymous “John Doe” defendants  
27 | are a single individual or a team of two or more individuals, this Motion to Compel will refer to  
| them collectively in the plural as the “Defendants” unless otherwise specified.

<sup>28</sup> <sup>2</sup> The “Handle” as used in this motion shall have the same meaning as it does in the Subpoena, which is “the Reddit handle or account, u/SOSilva7.” See Stoltz Dec. ¶ 4, Ex. 2 at ¶ 8.

1 (or more) of the Defendants, specifically, John Doe 2 (the “Defamatory Speaker”).<sup>3</sup> Mr. Silva  
 2 seeks the requested information to identify and serve the anonymous Defamatory Speaker in the  
 3 Florida Lawsuit. Given that the identity of the Defamatory Speaker is not yet known by Mr. Silva,  
 4 Reddit has already notified the Defamatory Speaker of the Subpoena and has agreed to provide  
 5 him/her/them with copies of all filings in this action, including the instant Motion to Compel. *See*  
 6 Duffy Decl. iso Motion to Compel (“Duffy Decl.”) filed herewith at ¶ 7.

7 As demonstrated below, the matter before the Court presents a *classic* example of when an  
 8 anonymous speaker’s unlawful, defamatory remarks and evasive conduct results in a forfeiture of  
 9 the speaker’s qualified right to anonymity. *See Smythe v. Does*, Case No. 15-mc-80292-LB, 2016  
 10 WL 54125, at \*2 (N.D. Cal. Jan. 5, 2016) (“Where anonymous speech is alleged to be unlawful,  
 11 the speaker’s right to remain anonymous may give way to a plaintiff’s need to discover the  
 12 speaker’s identity in order to pursue its claim.”) (citation omitted). Accordingly, for the reasons  
 13 provided herein, Mr. Silva respectfully requests the Court issue an order granting this Motion to  
 14 Compel.

15 **II. FACTUAL AND PROCEDURAL BACKGROUND**

16 **A. The Defamation Campaign And the Florida Lawsuit**

17 For unknown reasons, the anonymous Defendants orchestrated and executed an elaborate  
 18 defamation and harassment campaign against Mr. Silva involving numerous false, defamatory,  
 19 extreme and outrageous statements published across a website, Twitter.com, Reddit.com, and a  
 20 mobile billboard. Stolz Decl, ¶ 1, Ex. 1 ¶¶ 15-16. Numerous examples of these sensationnally false  
 21 statements are set out in the Complaint in the Florida Lawsuit. In particular, the Defendants have  
 22 falsely and outrageously published statements that accuse Mr. Silva of criminal activity, including  
 23 bribery and some of the most infamous acts conceivable involving serial sexual abuse and sexual  
 24 harassment against “young women” in the modeling industry. Stolz Decl. Ex. 1 ¶¶ 17, 21, 24, 26,  
 25 28-29, 33, 45. Moreover, the defamatory statements falsely liken him to the conduct of Jeffry  
 26

27 <sup>3</sup> Per the Complaint, John Doe 2 created the Reddit username u/SOSilva7 on September 8, 2022 –  
 28 the same day the website was created with false and defamatory statements and accusations  
 against Mr. Silva. Stolz Decl. ¶ 1, Ex. 1, ¶¶ 4 & 23.

1 Epstein—one of the most notorious sex offenders in American history. *See id.* Ex. 1 ¶¶ 17, 21, 29,  
 2 53. The anonymous Defendants have then paraded these false and scandalous allegations on  
 3 mobile billboards in Miami.

4 Of particular significance to this Motion to Compel are the allegations and claims  
 5 regarding the false and defamatory statements published by “John Doe 2” (and potentially other  
 6 Defendants) on Reddit’s platform under the Handle u/SOSilva7. *Id.*, ¶¶ 1 and 3. The false and  
 7 defamatory statements remain publicly available on Reddit’s platform, including on the posts and  
 8 pages the Defendants created, which puts the identity of the individual(s) behind the Reddit  
 9 Handle directly at issue. *Id.*, ¶ 1.

10 **B. Mr. Silva’s Overwhelming Efforts to Discover Defendants’ Identities**

11 On January 4, 2023, Mr. Silva initiated the Florida Lawsuit and brought five claims against  
 12 the Defendants in the Southern District of Florida: Defamation<sup>4</sup> (Count I), Defamation Per Se  
 13 (Count II), Defamation by Implication (Count III), Intentional Infliction of Emotional Distress  
 14 (Count IV), and Stalking under section 784.0485(1), Florida Statutes (Count V). Stolz Decl., ¶ 1.  
 15 Since filing the Florida Lawsuit, Mr. Silva has worked diligently to identify the anonymous  
 16 Defendants primarily so he can effectuate proper service for the Florida Lawsuit. *Id.*, ¶¶ 1, 3-4, 9,  
 17 12, and Ex. 4. However, Mr. Silva has not yet been able to identify the anonymous Defendants,  
 18 including the Defamatory Speaker behind the Reddit Handle. *Id.* Nevertheless, Mr. Silva has  
 19 undertaken *substantial* efforts and incurred *significant* expense in attempting to identify and serve  
 20 the Defendants, including but not limited to, the following:

21

- 22 • Subpoenaed Reddit for the identity of the owner(s) of the Reddit Handle, the  
 23 publisher(s) of the defamatory Reddit posts, and the moderator(s) of the Reddit forum  
 24 at issue in the Complaint—which, as discussed below, is the subject of this motion.
- 25 • Subpoenaed Twitter, Inc. for the identity of the owner(s) of the Twitter account at issue  
 26 in the Complaint;
- 27 • Subpoenaed Wix for the identity of the purchaser of the Wix-domain associated with  
 28 the Website at issue in the Complaint;

29

---

<sup>4</sup> In Florida, defamation “encompasses both libel and slander.” *Norkin v. The Fla. Bar*, 311  
 30 F. Supp. 3d 1299, 1303 (S.D. Fla. 2018) (citations omitted). As noted in the Complaint, the three  
 31 defamatory claims brought by Mr. Silva are for libel and are intended to be construed as such in  
 32 this Motion to Compel. *See* Stolz Decl. ¶ 1, Ex. 1 at Counts I-III, pp. 13-15.

1       • Subpoenaed Verizon, which is the cell-phone service provider for at least one  
 2 individual believed to be at the helm of the defamation campaign against Mr. Silva and  
 3 the network provider for the IP address associated with the Website;  
 4       • Subpoenaed several individuals based on records produced by Verizon and Wix; and  
 5       • Engaged a private investigator to assist in identifying the anonymous Defendants.

6           Additionally, Mr. Silva is in the process of preparing and issuing subpoenas to several  
 7 other individuals and companies in hopes of uncovering information that could lead to the  
 8 identities of the Defendants. These and other efforts are detailed in a public filing in the Florida  
 9 Lawsuit. *Id.* ¶ 9, Ex. 4. Once again, the foregoing is only a sample of Mr. Silva’s extensive efforts  
 10 undertaken thus far. At this time, however, Mr. Silva has not received any information from  
 11 Reddit or elsewhere that could be reasonably calculated to lead to the discovery of the information  
 12 sought in the Subpoena. *Id.* ¶¶ 7, 9, 12-13, 19, 23.

13           **C. The Subpoena, Reddit’s Objections, and Meet-and-Confer in Satisfaction of  
 14 Civil Local Rule 37**

15           Initially, Mr. Silva issued a subpoena to Reddit on February 10, 2023 (the “Initial  
 16 Subpoena”) which requested documents and information relating to the identity of the user(s) or  
 17 subscriber(s) who own(s) and operate(s) the Reddit Handle, with the place of compliance in  
 18 Florida. Stoltz Decl. at ¶ 4, Ex. 2. Shortly thereafter, counsel for Reddit asserted various objections  
 19 in response to the Initial Subpoena in lieu of providing responsive documents or information. *Id.* at  
 ¶ 5, Ex.

20           Counsel for Plaintiff and Reddit thereafter engaged in cooperative meet-and-confer efforts,  
 21 communicating via email and by phone on numerous occasions in the weeks after Reddit provided  
 22 its objections to the Initial Subpoena; in that process, they were able to clarify and dispense with  
 23 several of Reddit’s objections. *Id.* ¶¶ 3, 6-14, Ex. 9. To amicably resolve certain other objections,  
 24 counsel for Mr. Silva issued and served the instant Subpoena upon Reddit in California on March  
 25 31, 2023, with the place of compliance in San Francisco. *Id.* ¶¶ 14 & 17, Ex. 16 [Subpoena]; *see*  
 26 *also* Duffy Decl. at ¶ 3. This was done with the understanding that if Mr. Silva were required to  
 27  
 28

1 file a motion to compel the requested discovery from Reddit, it would be filed in the Northern  
 2 District of California (where Reddit is headquartered).<sup>5</sup> Stolz Decl. ¶¶ 11 and 14.

3 The Subpoena requests the following from Reddit:

4 All non-content documents, communications, and information that constitute basic  
 5 subscriber information for the owner(s) of the Handle, including, but not limited to,  
 6 name(s), street/mailing address(s), email address(es), IP logs, username(s) or other  
 7 subscriber identity, payment information, billing information, or any other  
 8 information that is related or could be used to identify the owner(s) of the Handle.

9 *Id.* ¶ 17, Ex. 6 at 7.

10 On April 4, 2023, Reddit responded with its written objections to the Subpoena. *Id.* ¶ 18,  
 11 Ex. 7. Pursuant to this Court's Civil Local Rule 37, counsel for Mr. Silva continued to engage in  
 12 meet-and-confer efforts, replying on April 7, 2023, about several issues raised in Reddit's  
 13 objection letter. *Id.* ¶ 19, Ex. 8. Counsel for both sides made progress in clarifying the scope of the  
 14 Subpoena (which seeks only non-content basic subscriber information) and, in turn, narrowing  
 15 Reddit's objections. *Id.* ¶ 19-20. Ultimately, Reddit took the position that it could not produce the  
 16 requested documents or information unless a court issues an order determining that the  
 17 Defamatory Speaker's anonymity is not protected by the First Amendment, explaining on April 4,  
 18 2023, that the scope of its objection was now limited to a single ground as follows:

19 [T]he amended subpoena implicates the First Amendment right to anonymous  
 20 speech and is therefore premature to the extent it seeks BSI for purposes of  
 21 identifying the speaker. When adjudicating a subpoena or other request for  
 22 compelled disclosure that would reveal the identity of an anonymous speaker, a  
 23 court should (1) notify the speaker and provide them with an opportunity to  
 24 (anonymously) defend their anonymity; (2) require the party seeking disclosure to

25  
 26 <sup>5</sup> Notice of the Subpoena was served on the only named Defendant to the Florida Lawsuit, Mobile  
 27 Billboards, Inc. on March 31, 2023, whose counsel confirmed later that day that they had no  
 28 objection to the Subpoena. Stolz Decl. ¶ 15, Ex. 5. As noted above, following receipt of the  
 Subpoena, counsel for Reddit advised that Reddit had notified the Defamatory Speaker(s) of the  
 Subpoena. *Id.* ¶ 18.

1 make a prima facie showing on the merits of their claim; and (3) balance the  
 2 equities, weighing the potential harm to the party seeking disclosure against the  
 3 speaker's interest in anonymity, in light of the strength of the underlying claim.  
 4 Stoltz Decl. ¶ 18, Ex. 7; *see also id.* ¶ 20 [“any motion to compel that your client may file in  
 5 NDCA would be limited to having the Court resolve the First Amendment issue.”]. As such,  
 6 further meet-and-confer efforts appeared futile. Stoltz Decl. ¶ 21. Nevertheless, prior to filing the  
 7 instant Motion to Compel, California counsel for Plaintiff further met and conferred with Reddit's  
 8 counsel to discuss Reddit's objection and see if anything more could be done to resolve them.  
 9 However, counsel still could not mutually resolve Reddit's sole remaining objection regarding the  
 10 First Amendment. Duffy Decl. ¶¶ 4, 6-7.

11       Based on Reddit's objection, and having exhausted efforts to resolve this matter without  
 12 judicial intervention, Mr. Silva needs a court order to obtain the necessary basic subscriber  
 13 information to identify the owner of the Reddit Handle.

14 **III. ARGUMENT**

15       **A. Summary of Law**

16       Strong grounds exist for the Court to issue an order compelling Reddit to comply with the  
 17 Subpoena and promptly produce the requested information. Rule 45 of the Federal Rules of Civil  
 18 Procedure<sup>6</sup> provides the framework for obtaining discovery on a third-party through subpoenas.  
 19 Fed. R. Civ. P. 45(a)(1)(D). The scope of a subpoena issued under Rule 45 is informed by Rule  
 20 26, which governs civil discovery in general. *See, e.g., Gonzalez v. Google, Inc.*, 234 F.R.D. 674,  
 21 680 (N.D. Cal. 2006). Under the Rules, a court may compel a third-party to produce documents  
 22 and information pursuant to a subpoena regarding any “non-privileged matter that is relevant to  
 23 any party's claim or defense and proportional to the needs of the case.” *See* Fed. R. Civ. P.  
 24 26(b)(1); *see also* Fed. R. Civ. P. 45(d)(2)(B)(i) [“[a]t any time, on notice to the commanded  
 25 person, the serving party may move the court for the district where compliance is required for an

26  
 27 <sup>6</sup> Unless otherwise specified, any reference to a “Rule” or the “Rules” shall be construed as a  
 28 reference to the Federal Rules of Civil Procedure.

1 order compelling production or inspection.” ]. On a motion to compel compliance, the moving  
 2 party is to “detail the basis for the party’s contention that it is entitled to the requested discovery  
 3 and show how the proportionality and other requirements of Fed. R. Civ. P. 26(b)(2) are satisfied.”  
 4 N.D. Cal. Civ. LR. 37-2. The Court has discretion to determine whether to grant a motion to  
 5 compel. *See Garrett v. City & Cnty. of San Francisco*, 818 F.2d 1515, 1519 (9th Cir. 1987).

6 When a motion to compel involves a third-party subpoena to an online service provider for  
 7 documents and information that could potentially reveal the identity of an anonymous speaker, a  
 8 threshold determination regarding certain First Amendment standards must first be made. This is  
 9 premised on an online user’s First Amendment right to anonymous speech. *See, In re DMCA*  
 10 §512(h) *Subpoena to Twitter, Inc.*, 608 F. Supp. 3d 868 at 876 (N.D. Cal. June 21, 2022) (citing *In*  
 11 *re Anonymous Online Speakers*, 661 F.3d 1168, 1173 (9th Cir. 2011)). But “the right to anonymity  
 12 is not absolute.” *Smythe v. Does*, Case No. 15-mc-80292-LB, 2016 WL 54125, at \*2 (N.D. Cal.  
 13 Jan. 5, 2016) (citing *Art of Living Found. v. Does 1-10*, No. 10-CV-05022-LHK, 2011 WL  
 14 5444622, at \*4 (N.D. Cal. Nov. 9, 2011)); *accord In re Anonymous Online Speakers*, 661 F.3d  
 15 1168, 1173 (9th Cir. 2011). “Where anonymous speech is alleged to be unlawful, the speaker’s  
 16 right to remain anonymous may give way to a plaintiff’s need to discover the speaker’s identity in  
 17 order to pursue its claim.” *Art of Living*, 2011 WL 5444622, at \*4.

18 On a motion to compel a service provider to produce information that could potentially  
 19 reveal the identity of an anonymous speaker, the party seeking the information must first  
 20 “persuade the court that there is a real evidentiary basis for believing that the defendant has  
 21 engaged in wrongful conduct that has caused real harm to the interests of the plaintiff.” *Music*  
 22 *Grp. Macao Com. Offshore Ltd. v. Does*, 82 F. Supp. 3d 979, 983 (N.D. Cal. 2015) (citing  
 23 *Highfields Cap. Mgmt., L.P. v. Doe*, 385 F. Supp. 2d 969, 975-76 (N.D. Cal. 2005). In reaching  
 24 such a determination, this court has applied a three-pronged framework: “[W]hen adjudicating a  
 25 subpoena or other request for compelled disclosure that would reveal the identity of an anonymous  
 26 speaker, a court should (1) notify the speaker and provide them with an opportunity to  
 27 (anonymously) defend their anonymity; (2) require the party seeking disclosure to make a prima  
 28 facie showing on the merits of their claim; and (3) balance the equities, weighing the potential

1 harm to the party seeking disclosure against the speaker's interest in anonymity, in light of the  
 2 strength of the underlying claim." *In re DMCA § 512(h) Subpoena to Twitter, Inc.*, 608  
 3 F. Supp. 3d 868, 876. As explained below, the Subpoena to Reddit satisfies the applicable First  
 4 Amendment standards, and the Court should accordingly grant this Motion to Compel.

5 **B. Notice Has Been Provided to the Anonymous Doe Defendant**

6 As evidenced by the very nature of the Subpoena, Mr. Silva does not know the identity of  
 7 the Defamatory Speaker and is thus limited in the ability to provide notice beyond the public  
 8 docket filings he has already initiated. As that hurdle naturally presents itself whenever the issue  
 9 before this Court arises, courts have determined the notice requirement is satisfied when the  
 10 service provider (e.g., Reddit) represents that it has transmitted notice to the anonymous speaker  
 11 with the available information it has for the account. *See, e.g., Krinsky v. Doe* 6, 159 Cal. App. 4th  
 12 1154, 1171 (Cal. 2008) ("when ISPs [Internet Service Providers] and message-board sponsors  
 13 (such as [Reddit]) themselves notify the defendant that disclosure of his or her identity is sought,  
 14 notification by the plaintiff should not be necessary"); *see also Solers, Inc. v. Doe*, 977 A.2d 941,  
 15 954 (D.C. 2009) (collecting cases) ("it often will be simpler and more effective to require the  
 16 recipient of the subpoena (who likely knows the identity of the anonymous defendant, or at least  
 17 knows how to contact him) to provide such notice.").

18 Here, counsel for Mr. Silva coordinated with Reddit to provide the Defamatory Speaker  
 19 with sufficient notice of the Initial Subpoena, this Subpoena, and this Motion so the speaker may  
 20 have an opportunity to defend their anonymity. *See Stolz Decl.* ¶ 18, Ex. 7; *see also Duffy Decl.*  
 21 ¶ 7. Moreover, the Defamatory Speaker has had ample opportunity to make an appearance in  
 22 either this action or the Florida Lawsuit, which they are likely aware of given the carefully  
 23 coordinated nature of the defamation campaign. *See generally, e.g., Krinsky*, 159 Cal. App. 4th at  
 24 1160 ("Doe" defendant anonymously appeared and moved to quash after receiving notice from  
 25 online service provider). Accordingly, the Court should find that the notice requirement has been  
 26 satisfied.

27  
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**C. Mr. Silva Alleges a *Prima Facie* Case Under Florida Law for Defamation, Defamation *Per Se*, and Defamation by Implication**

The Florida Constitution expressly provides that one who abuses the right to freely speak, write, and publish on a subject shall be held responsible. *See Fla. Const. Art. I, § 4.* In Florida, an action for defamation will lie for “a false and unprivileged publication by letter, or otherwise, which exposes a person to distrust, hatred, contempt, ridicule or obloquy or which causes such person to be avoided, or which has a tendency to injure such person in [their] office, occupation, business or employment.” *Blake v. Giustibelli*, 182 So.3d 881, 884 (Fla. 4th DCA 2016) (citations and quotations omitted). Under Florida law, a plaintiff must satisfy the following elements to plead a *prima facie* defamation case: “(1) publication; (2) falsity; (3) actor must act with knowledge or reckless disregard as to the falsity on a matter concerning a public official, or at least negligently on a matter concerning a private person; (4) actual damages; and (5) statement must be defamatory.” *Jews For Jesus, Inc. v. Rapp*, 997 So.2d 1098, 1106 (Fla. 2008).

14 Florida law also recognizes that “false statements which suggest that someone has  
15 committed a dishonest or illegal act are defamatory *per se*.” *Corsi v. Newsmax Media, Inc.*, 519  
16 F. Supp. 3d 1110, 1119 (S.D. Fla. 2021) (citations omitted). Thus, “when a statement is so  
17 obviously defamatory and damaging to one’s reputation, it gives rise to an absolute presumption  
18 both of malice and damage.” *Id.* (citations and quotations omitted). Moreover, Florida recognizes  
19 a cause of action for defamation by implication. *Jews For Jesus, Inc. v. Rapp*, 997 So.2d 1098,  
20 1100 (Fla. 2008). “Defamation by implication arises, not from what is stated, but from what is  
21 implied when a defendant (1) juxtaposes a series of facts so as to imply a defamatory connection  
22 between them, or (2) creates a defamatory implication by omitting facts . . . .” *Klayman v. Judicial*  
23 *Watch, Inc.*, 22 F. Supp. 3d 1240, 1254 (S.D. Fla. 2014) (citing *Jews for Jesus*, 997 So.2d at  
24 1106). Thus, “[d]efamation by implication is premised not on direct statements but on false  
25 suggestions, impressions and implications arising from otherwise truthful statements.” *Corsi*,  
26 519 F. Supp. 3d at 1124 (citation omitted).

1                   **1. Publication**

2                   To satisfy the *publication* element of defamation, a plaintiff must plead that “the  
 3 defendant published a false statement about plaintiff to a third party.” *Sirpal v. Univ. of Miami*,  
 4 684 F. Supp. 2d 1349, 1360 (S.D. Fla. 2010); *accord Klayman v. Jud. Watch, Inc.*, 22 F. Supp. 3d  
 5 1240, 1251 (S.D. Fla. 2014) (“The publication of a statement in a defamation claim only requires  
 6 the dissemination of a false statement to a person other than the defamed person.”). Put simply,  
 7 “[p]ublication of defamatory matter is communication of the statement to a third person.” *Grandava-*  
 8 *Centeno v. Lara*, 489 So.2d 142, 143 (Fla. 3d DCA 1986).

9                   Here, several allegations satisfy the “publication” element. Initially, the Defendants sent a  
 10 mobile billboard around the crowded streets of South Miami Beach during the weekend of Miami  
 11 Art Basel featuring a large photo of Mr. Silva’s face with text falsely accusing Mr. Silva of being a  
 12 sexual predator. Stolz Decl. ¶ 1, Ex. 1 at ¶¶ 31-36. In fact, Mr. Silva’s seventeen-year-old son saw  
 13 the billboard and was consequently devastated. *Id.* at ¶ 36. Meanwhile, it is a matter of common  
 14 sense that other members of the public necessarily saw the billboard while paraded around South  
 15 Miami Beach during one of the most popular events of the year. Further, the mobile billboard  
 16 directed viewers’ attention to Reddit and Twitter pages that the Defendants created, which contain  
 17 additional false and defamatory statements. *Id.* at ¶ 1, Ex. 1, at ¶ 4.

18                   The defamatory statements on the Reddit and Twitter pages independently constitute  
 19 publication. Under the guise of username u/SOSilva7, Defendants posted defamatory remarks  
 20 about Mr. Silva on various Reddit forums, including r/NYC, r/Miami, r/Florida, r/Chicago,  
 21 r/Illinois, r/London, r/metoo, r/Modeling, r/sexualassault, r/TwoXChromosomes, r/abusesurvivors,  
 22 r/emotionalabuse. *Id.* at ¶¶ 23-24. Collectively, there are roughly 16.1 million members in these  
 23 Reddit forums. *Id.* at ¶ 24. Numerous Reddit users have directly engaged with Defendants’  
 24 account by commenting on and “liking” posts that contain false and defamatory statements about  
 25 Mr. Silva. Stolz Decl. ¶ 1. Additionally, Defendants created and assigned themselves as the  
 26 moderator of a Reddit forum titled r/SOSSilvaSurvivors for which it garnered a few “followers”  
 27 and posted more false and defamatory statements about Mr. Silva while tagging other popular

1 Reddit forums to deliberately ensure that followers of those forums would see the statements. *Id.*  
 2 ¶ 1, Ex. 1, at ¶¶ 25-26.

3 Similarly, Defendants published false and defamatory statements on the Twitter account  
 4 with the handle @SOSSilva7. *Id.* ¶ 1, Ex. 1 at ¶¶ 28-30. As depicted in the Complaint, each  
 5 defamatory tweet was published directly to various media outlets by tagging them in the posts: the  
 6 Miami Herald, Miami New Times, Miami Beach News, and the account for the international arts  
 7 festival, Art Basel. Finally, the Defendants created a website called “sossilva.org” wherein they  
 8 published more false and defamatory statements about Mr. Silva. The website and its tortious  
 9 contents are available to members of the public, some of whom have viewed it and reshared the  
 10 link to the website on social media platforms like Reddit.

11 Accordingly, Mr. Silva has demonstrated a sufficient evidentiary basis for believing the  
 12 Defendants *published* the false and defamatory statements about him.

13 **2. Falsity**

14 Under Florida law, the element of *falsity* is satisfied by showing that the defamatory  
 15 statement is a factual assertion that is “capable of being proved true or false on a core of objective  
 16 evidence,” rather than a statement of pure opinion. *See Skupin v. Hemisphere Media Grp., Inc.*,  
 17 314 So.3d 353, 356 (Fla. 3d DCA 2020); *see also Friedgood v. Peters Pub. Co.*, 521 So.2d 236,  
 18 242 (Fla. 4th DCA 1988) (“[A] false statement of fact is absolutely necessary if there is to be  
 19 recovery in a defamation action.”) (citation omitted).<sup>7</sup> When the claim is for defamation by  
 20 implication, falsity is also established when a defendant creates a defamatory implication by  
 21 juxtaposing or omitting certain facts. *See Klayman*, 22 F. Supp.3d at 1254.

22 The statements at issue are textbook examples of factually false statements subject to a  
 23 claim for defamation under Florida law. Specifically, the statements on the Website, Twitter, and  
 24 Reddit pages that falsely accuse Mr. Silva of engaging in sexual misconduct with young women—  
 25 particularly within the modeling industry—are “capable of being proved true or false on a core of  
 26

27 <sup>7</sup> Significantly, courts recognize “there is no constitutional value in false statements of fact.”  
 28 *Morse v. Ripken*, 707 So.2d 921, 922 (Fla. 4th DCA 1998) (quoting *Gertz v. Robert Welch, Inc.*,  
 418 U.S. 323, 340 (1974)).

1 objective evidence.” The statements—on their face—falsely accuse Mr. Silva of egregious  
 2 criminal acts that are capable of being proven that they did not occur as a matter of fact. Likewise,  
 3 the *context* of the statements suggests that Mr. Silva committed egregious criminal acts of sexual  
 4 misconduct. The statements falsely and outrageously liken him to disgraced convicted sex  
 5 offender, Jeffry Epstein. In sum, the defamatory statements about Mr. Silva constitute egregious  
 6 statements of fact that are capable of being proven false based on objective evidence.<sup>8</sup>

7 Accordingly, Mr. Silva has demonstrated a sufficient evidentiary basis that the defamatory  
 8 statements about him are *false* statements of fact “capable of being proved true or false on a core  
 9 of objective evidence.”

10 **3. Defamation Per Se: Malice, Damages, Defamatory**

11 In Florida, when a false statement suggests that an individual has committed a dishonest or  
 12 illegal act, it is considered “so obviously defamatory and damaging to one’s reputation” that it  
 13 gives rise to an “absolute presumption” that the third and fourth elements of defamation—*malice*  
 14 and *damages*—have been satisfied. *Corsi*, 519 F. Supp. 3d at 1119 (citations and quotations  
 15 omitted). “[A] publication is libelous *per se*, or actionable *per se*, if, when considered alone  
 16 without innuendo: (1) it charges that a person has committed an infamous crime; (2) it charges a  
 17 person with having an infectious disease; (3) it tends to subject one to hatred, distrust, ridicule,  
 18 contempt, or disgrace; or (4) it tends to injure one in his trade or profession.” *Blake v. Giustibelli*,  
 19 182 So.3d 881, 884 (Fla. 4th DCA 2016) (citations omitted).

20 Here, the pervasive and carefully coordinated efforts underlying Defendants’ actions  
 21 demonstrate that they knowingly published the egregious falsehoods about Mr. Silva. In any  
 22 event, Defendants’ accusations are defamatory *per se* because they blatantly accuse Mr. Silva of  
 23 committing “crimes” and some of the most infamous crimes conceivable involving sexual  
 24 misconduct. Not to mention, the Website post also accuses him of bribery. Further, the defamatory  
 25 statements falsely liken him to the conduct of Jeffry Epstein—one of the most notorious sex  
 26

27 <sup>8</sup> Notably, as discussed *infra*, Section E, the information in Reddit’s possession regarding the  
 28 identity of the Defamatory Speaker is essential in affording Mr. Silva his due process right to  
 decisively establish the falsity of the defamatory statements about him in a court of law.

1 offenders in American history. Finally, the statements falsely accuse Mr. Silva of committing  
 2 these abhorrent acts against “young women” in the modeling industry, which undeniably has a  
 3 tendency to injure him in his profession as the owner of the model and talent agency, Select Model  
 4 Management. Stolz Decl. ¶ 1, Ex. 1 at ¶ 15.

5 Accordingly, Mr. Silva has shown a sufficient evidentiary basis that the Defendants’  
 6 accusations about him are defamatory *per se* and, alternatively, are malicious and defamatory  
 7 statements that caused harm to Mr. Silva’s family, goodwill, and his personal and professional  
 8 reputation.

9                   **D.        Mr. Silva Alleges a *Prima Facie* Case Under Florida Law for Intentional  
 10 Infliction of Emotional Distress (“IIED”) and Stalking (Fla. Stat. § 784.0485)**

11                   **1.        IIED**

12                  To state a *prima facie* claim for IIED in Florida, one must show that “(1) the wrongdoer’s  
 13 conduct was intentional or reckless; (2) the conduct was outrageous; (3) the conduct caused  
 14 emotional distress; and (4) the emotional distress was severe.” *Williams v. Worldwide Flight  
 15 SVCS., Inc.*, 877 So.2d 869, 870 (Fla. 3d DCA 2004). As established above, accusing someone of  
 16 criminal misconduct is extreme and outrageous conduct that goes beyond the bounds of all human  
 17 decency. In short, the false and defamatory statements discussed above have personally harmed  
 18 Mr. Silva to an immeasurable degree.

19                  Additionally, the nature of the carefully crafted campaign to launch a concerted attack on  
 20 Mr. Silva is extreme and outrageous in and of itself—from making a website, to parading a mobile  
 21 billboard around South Miami Beach with Mr. Silva’s face on it during one of the busiest  
 22 weekends of the year, labeling him a predator, to the other egregious conduct alleged against  
 23 Defendants in the Complaint. This conduct clearly attempts to seriously injure Mr. Silva’s status,  
 24 goodwill, and reputation, and constitutes extreme and outrageous behavior that goes beyond the  
 25 bounds of human decency.

26                   **2.        Stalking (Fla. Stat. § 784.0485)**

27                  Finally, Mr. Silva pleads a *prima facie* claim for stalking against Defendants under section  
 28 784.0485(1), Florida Statutes. To plead a cause of action under section 784.0485(1), a party must  
 demonstrate the defendant engaged in a course of harassing conduct that is (i) specifically directed

1 at plaintiff, (ii) causes “substantial emotional distress to plaintiff, and (iii) serves no legitimate  
 2 purpose. *See Ozyesilpinar v. Jalali*, 325 So.3d 289, 293 (Fla. 3d DCA 2021).

3 Here, as previously explained, the Defendants engaged in an elaborate course of conduct  
 4 designed to harass Mr. Silva to cause him substantial emotional distress. The mobile billboard  
 5 driven around the crowded streets of South Miami Beach featured a large photo of Mr. Silva’s  
 6 face with text that knowingly propagated false accusations about alleged predation (Stolz Dec. ¶ 1,  
 7 Ex. 1 at ¶¶ 31-36), as viewed by Mr. Silva’s seventeen-year-old son who was devastated. *Id.* at  
 8 ¶ 36. Additionally, the Twitter account made a deliberate effort to tag media outlets and other  
 9 pages that are relevant to personal and professional matters in Mr. Silva’s life.

10 Overall, the defamation campaign has been relentless and ongoing for several months; it  
 11 transcends numerous platforms and serves no legitimate purpose other than to harass and  
 12 unlawfully injure Mr. Silva.

13 **E. The Balance of the Equities Favors Disclosure of Basic Identifying  
 14 Information**

15 Finally, the balance of equities and interests of justice favor disclosure of the basic  
 16 identifying information sought in the Subpoena because the potential harm to Mr. Silva, his  
 17 family, and his personal and professional reputation outweighs the Defamatory Speaker’s interest  
 18 in impenetrable anonymity.

19 First, as established above, Mr. Silva, his family, and his businesses have already suffered,  
 20 and will continue to suffer, serious harm with each day that passes without being able to identify  
 21 the Defamatory Speaker. Second, obtaining the identity of the Defamatory Speaker from Reddit is  
 22 “necessary to enable [Mr. Silva] to protect against or remedy serious wrongs” by way of the  
 23 Florida Lawsuit. *Music Group*, 82 F. Supp. 3d at 983-84 (quoting *Highfields*, 385 F. Supp. 2d at  
 24 976)). The requested discovery is essential to Mr. Silva’s ability to move forward with the Florida  
 25 Lawsuit and address the dispute with the necessary parties. Without the identity of the Defamatory  
 26 Speaker, Mr. Silva will not be able to serve him in the Florida Lawsuit, which in turn will deny  
 27 adjudication and justice on the merits of Mr. Silva’s claims. In short, without the requested  
 28 information from Reddit, Mr. Silva’s due process rights will continue to be prejudiced.

1        Additionally, as previously demonstrated, Mr. Silva has been working diligently to obtain  
 2 the information from other sources. Yet Reddit is the only entity that can provide the important  
 3 information requested in the Subpoena. The Subpoena is narrowly tailored to basic subscriber  
 4 information (BSI) and proportional to the needs of the case, with any identifying information  
 5 obtained from Reddit to be used solely for the purposes of identifying the Defamatory Speaker and  
 6 serving him with process in the Florida Lawsuit. While the true name of John Doe 2 is unknown to  
 7 Plaintiff, this information is readily available to Reddit and should be produced.

8        Further, the equitable considerations underlying the Federal Rules of Civil Procedure  
 9 support disclosure in this action. Notably, the Rules establish at the outset that they “should be  
 10 construed, administered, and employed by the court and the parties to secure the just, speedy, and  
 11 inexpensive determination of every action and proceeding.” Fed. R. Civ. P. 1. Thus, the equities  
 12 further favor disclosure by Reddit pursuant to Rule 45 because any information potentially  
 13 identifying a defendant in the underlying Lawsuit would unequivocally promote a more “just,  
 14 speedy, and inexpensive” determination of the underlying Lawsuit. Absent the identity of the  
 15 Defamatory Speaker, Mr. Silva would be forced to incur additional expense in attempting to track  
 16 down the Defamatory Speaker’s identity. Given the efforts undertaken to date by Mr. Silva to  
 17 obtain this vital information, and the lack of success, it appears unlikely that this information will  
 18 be obtainable from other sources. *See Stoltz Decl.* ¶ 9, 12-13 19.

19        On the other hand, the Defamatory Speaker—Defendant John Doe 2—has a diminished  
 20 interest in anonymity under the circumstances. First, as established above, the speech he espoused  
 21 against Mr. Silva on Reddit, as well as the other speech alleged in the Complaint that he was likely  
 22 involved with publishing, is unprotected speech and is defamatory *per se*. Second, the interests of  
 23 justice and principles of equity favor that the Defamatory Speaker be identified so he may answer  
 24 for his egregious misdeeds in court. Likewise, the interests of justice and principles of equity favor  
 25 production of the identifying information so the Speaker may be properly served with process in  
 26 the underlying Lawsuit. Also, the anonymous Speaker is named as a Doe defendant in the  
 27 underlying Florida Lawsuit, rather than a witness or third-party caught up in another’s unlawful  
 28 conduct. Moreover, equity favors disclosure where, as here, the need to obtain identifying

1 information from a service provider such as Reddit is due to the Defamatory Speaker's own  
2 actions (or those of his accomplices) in purposefully concealing their identities.

3 In sum, the balance of the equities weighs decisively in Mr. Silva's favor based on the  
4 Defamatory Speaker's carefully-coordinated and anonymous campaign to defame Mr. Silva.

5 **IV. CONCLUSION**

6 For the foregoing reasons, Mr. Silva respectfully requests that the Motion to Compel be  
7 granted and that the Court issue an order compelling Reddit to comply with the Subpoena and  
8 promptly produce the requested information regarding the identity of the Defamatory Speaker.

9  
10 DATED: April 19, 2023

BARTKO ZANKEL BUNZEL & MILLER  
A Professional Law Corporation

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13 By: /s/ *Kerry L. Duffy*  
14 Kerry L. Duffy  
15 Attorneys for Plaintiff RICCARDO SILVA  
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